

21. Calls from CenturyTel customers in the San Marcos exchange to ASAP customers using 512-265, 512-384, or 512-580 NXXs, as currently assigned, do not qualify for ELCS under PURA and the Commission's Substantive Rules.
22. ASAP may not designate the calling path the traffic takes to the called party.
23. The "toll trunk" designation by CenturyTel and SWBT of the telephone trunk between San Marcos and SWBT's Greenwood tandem in Austin does not, in itself, affect the eligibility of a call passing over that trunk for ELCS treatment.
24. As an ILEC, CenturyTel is subject to the interconnection obligations of the Federal Telecommunications Act and the PURA. These rules establish certain requirements with respect to both wireless carriers, such as ASAP, and wireline carriers.
25. Federal law and the rules of the FCC do not prohibit CenturyTel from assessing its own customers that are presubscribed to CenturyTel or who use the CenturyTel dial-around number a toll charge when they place a call to a CMRS paging customer that is otherwise a toll call.
26. CenturyTel may charge its own customers that are presubscribed to CenturyTel or who use the CenturyTel dial-around number toll charges for calls to CMRS paging customers when the call terminates outside the CenturyTel's local calling area.
27. DELETED.
28. DELETED.
29. For pager-bound calls to ASAP's NPA-NXXs, ASAP is the called customer for the purposes of retail rating.
30. ISPs are the "called party" for purpose of retail rating a modem call to an ISP for purposes of accessing the Internet. ASAP's ISP customers are in Austin, which is not ELCS to the San Marcos exchange.
31. Calls from CenturyTel's San Marcos customers to ASAP's paging and ISP customers using the NXXs at issue, as currently assigned, are intraLATA toll calls; they are not ELCS local calls.

32. Calls from CenturyTel customers in San Marcos to ASAP's paging and ISP customers using the NXXs in question are properly dialed using 1+ or 0+ and not as a local call.
33. CenturyTel is not in violation of the Commission's ELCS order in Project No. 13267.
34. CenturyTel is not in violation of its Texas General Exchange tariff which provides for ELCS rating of calls between San Marcos and the Lockhart, Kyle, and Fentress exchanges because calls to ASAP's NXXs do not terminate within those exchanges.
35. CenturyTel did not act improperly when it changed the translations in its switch to require 1+ or 0+ dialing for calls from the San Marcos exchange to ASAP's NXXs because such calls do not qualify for local rating under ELCS.
36. The ILECs, CenturyTel, SWBT, and Verizon, are responsible for completing ELCS calls to exchanges that are within the approved ELCS territory.
37. Calls to ASAP's NXXs are not ELCS, and ASAP has responsibility to complete calls to its switch.
38. CenturyTel's actions with respect to retail rating of calls from CenturyTel's customers in San Marcos to ASAP's NXXs at issue are not anticompetitive in violation of PURA § 52.108(3).
39. CenturyTel is not in violation of the equal access dialing parity provisions in PURA § 55.009(c) or P.U.C. SUBST. R. § 26.275.

VII. Ordering Paragraphs

1. ASAP Paging, Inc.'s complaint against CenturyTel of San Marcos, Inc. is DENIED.
2. Order No. 3 entered in this proceeding, which prohibits CenturyTel from requiring 1+ or 0+ dialing and from charging toll to its San Marcos when they call the ASAP Lockhart 512-384 NXX, is SET ASIDE.
3. In accordance with CenturyTel's tariff, for calls from CenturyTel's San Marcos customers to ASAP's 512-265, 512-384 and 512-580 NXXs as currently assigned,

CenturyTel is authorized to require 1+ or 0+ dialing and to charge toll to its own customers who are presubscribed to CenturyTel or who use the CenturyTel dial-around number.

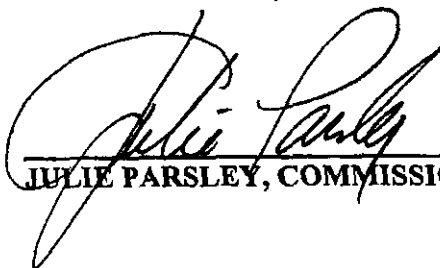
4. ASAP is ORDERED to file for registration with the Commission under PURA § 52.103 and P.U.C. Subst. R. 26.107 for the wireline services that ASAP provides to Internet service providers. Alternatively, ASAP shall cease such services.
5. All motions, requests for specific findings of fact or conclusions of law, and any other requests for general or specific relief, not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 9th day of October, 2003.

PUBLIC UTILITY COMMISSION OF TEXAS



REBECCA KLEIN, CHAIRMAN



JULIE PARSLEY, COMMISSIONER

ASAP Paging, Inc. Petition for Preemption of TPUC

Exhibit 2: PURA §§ 55.041-55.048

(b) The commission may not adopt rules that diminish in any manner the ability of an affected company or a political subdivision to enter into joint agreements for optional extended area service under this section.

(c) In this section, "political subdivision" means:

- (1) a county;
- (2) a municipality; or
- (3) an unincorporated town or village that has 275 or more access lines.

(V.A.C.S. Art. 1446c-0, Secs. 3.262(a) (part), (b))

Sec. 55.024. CHARGE FOR EXTENDED AREA SERVICE.

(a) An incumbent local exchange company that provides mandatory two-way extended area service to customers shall impose for that service a separately stated monthly charge of \$3.50 a line for a residential customer and \$7 a line for a business customer if, on September 1, 1995, the company:

- (1) served more than 1,000,000 access lines in this state; and
- (2) imposed a separately stated monthly charge for mandatory two-way extended area service of more than \$3.50 a line for a residential customer and more than \$7 a line for a business customer.

(b) The company shall recover all costs incurred and all loss of revenue that results from imposition of the rates prescribed by Subsection (a) in the manner prescribed by Section 55.048(c).

(c) The rate limitation prescribed by Subsection (a) does not apply to a separately stated monthly charge for:

- (1) extended area service in or into a metropolitan exchange; or
- (2) extended metropolitan service.

(V.A.C.S. Art. 1446c-0, Sec. 3.308)

Sec. 55.025. HUNTING SERVICE.

(a) A local exchange company shall make available, at a reasonable tariffed rate, hunting service from local exchange lines to extended metropolitan service lines.

(b) The company may not require a customer to purchase additional extended metropolitan service to obtain the hunting service.

(V.A.C.S. Art. 1446c-0, Sec. 3.311.)

SUBCHAPTER C. EXPANDED TOLL-FREE LOCAL CALLING AREAS

Sec. 55.041. DEFINITIONS.

In this subchapter, "metropolitan exchange," "local calling area of a metropolitan exchange," and "exchange" have the meanings and boundaries assigned by the commission on September 1, 1993.

(V.A.C.S. Art. 1446c-0, Sec. 3.304(b)(2) (part))

Sec. 55.042. CONTIGUOUS EXCHANGE.

The commission may expand a toll-free local calling area into an exchange that is not in a metropolitan exchange but is in a local calling area that is contiguous to a metropolitan exchange that the commission

determines has a community of interest with the exchange for which a petition is filed under this subchapter.

(V.A.C.S. Art. 1446c-0, Sec. 3 304(b)(2) (part).)

Sec. 55.043. SPLITTING EXCHANGES PROHIBITED.

Notwithstanding any other provision of this subchapter, the commission may not split a petitioning or requested exchange in establishing a toll-free local calling area.

(V.A.C.S. Art. 1446c-0, Sec. 3 304(b)(2) (part).)

Sec. 55.044. EXEMPTION.

(a) The commission may not require an incumbent local exchange company serving the petitioning or requested exchange to expand the company's toll-free local calling area under this subchapter if:

- (1) the incumbent local exchange company has fewer than 10,000 access lines;
- (2) the petitioning or requested exchange is served by a telephone cooperative corporation;
- (3) extended area service or extended metropolitan service is available between the exchanges;
- (4) the petitioning or requested exchange is a metropolitan exchange; or
- (5) the commission determines that the company has shown that to serve the area is not geographically or technologically feasible.

(b) To promote the wide dispersion of pay telephones, the commission may:

- (1) exempt pay telephones from this subchapter; or
- (2) change the rates charged for calls from pay telephones.

(V.A.C.S. Art. 1446c-0, Secs. 3 304(b)(1), (c).)

Sec. 55.045. ELIGIBILITY TO PETITION.

The telephone subscribers of an incumbent local exchange company exchange that serves not more than 10,000 access lines may petition the commission for expansion of the company's toll-free local calling area if:

- (1) the petitioning exchange's central switching office is located within 22 miles, using vertical and horizontal geographic coordinates, of the central switching office of the exchange requested for expanded local calling service; or
- (2) the petitioning exchange's central office is not more than 50 miles from the central office of the exchange requested for expanded local calling service and the exchanges share a community of interest.

(V.A.C.S. Art. 1446c-0, Sec. 3 304(a) (part).)

Sec. 55.046. PETITION REQUIREMENTS.

(a) A petition under this subchapter must be signed by a number of the exchange's subscribers equal at least to the lesser of 100 of the exchange's subscribers or five percent of the exchange's subscribers.

(b) An exchange that petitions under Section 55.045(2) must demonstrate in the petition that the exchange shares a community of interest with the requested exchange.

(c) For purposes of this section, the relationships between exchanges that create a community of interest include

- (1) a relationship because of schools, hospitals, local governments, or business centers; or
- (2) other relationships that would make the unavailability of expanded local calling service a hardship for the residents of the area.

(V A.C.S Art 1446c-0, Sec 3 304(a) (part).)

Sec. 55.047. BALLOTING AND CONSIDERATION.

(a) If the commission receives a petition that complies with this subchapter, the commission shall order the incumbent local exchange company to provide ballots to the subscribers in the petitioning exchange.

(b) The commission shall consider the request for expansion of the toll-free local calling area if at least 70 percent of the subscribers who vote do so in favor of the expansion

(c) The commission by rule shall provide for an expedited hearing on the issue of expansion.

(V A C S Art. 1446c-0, Sec 3 304(a) (part))

Sec. 55.048. CHARGES.

(a) The incumbent local exchange company shall recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area under this subchapter through a request other than a revenue requirement showing by imposing a monthly fee under Subsection (b) or (c), or both.

(b) The company may impose a monthly fee against each residential and business customer in the petitioning exchange. The fee may not exceed \$3.50 a line for a residential customer and \$7 a line for a business customer unless the customer's toll-free local calling area includes more than five exchanges. The company may impose an additional monthly fee of \$1.50 for each exchange in excess of five. This subsection applies regardless of the number of petitions required to obtain access to the exchanges. A company may impose a fee under this subsection only until the company's next general rate case.

(c) The company may impose a monthly fee against each of the company's local exchange service customers in this state. This fee is in addition to the company's local exchange rates.

(d) The company may not recover regulatory case expenses under this subchapter by imposing a surcharge on the subscribers of the petitioning exchange.

(V.A C S Art 1446c-0, Sec. 3.304(a) (part))

SUBCHAPTER D. OPERATOR SERVICE PROVIDERS

Sec. 55.081. DEFINITION.

In this subchapter, "operator service" means a service using live operator or automated operator functions to handle telephone service such as toll calling using collect, third-number billing, and calling card services. The term does not include a call for which the called party has arranged to be billed (800 service).

(V A C S. Art 1446c-0, Sec 3 052(a).)

ASAP Paging, Inc. Petition for Preemption of TPUC

Exhibit 3: PUC Substantive Rules 26.219-26.221

[PUC Subst. R.] §26.5. Definitions. (excerpted)

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (28) **Calling area** — The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.
- (50) **Customer access line** — A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.
- (83) **Extended local calling service (ELCS)** — Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Scope Surcharges).
- (105) **Interconnection** — Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §24.32 of this title (Relating to Universal Service) or integrated services digital network (ISDN) as defined in this section and/or extended area service/extended local calling service traffic of a certificated telephone utility (CTU) using the local access lines of another CTU, as described in section §26.272(d)(4)(A) of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.
- (117) **Local call** — A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory extended area service (EAS) or expanded local calling (ELC) proceeding.
- (118) **Local calling area** — The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.
- (121) **Local message** — A completed call between customer access lines located within the same local calling area.
- (122) **Local message charge** — The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.
- (123) **Local service charge** — The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.
- (124) **Local telecommunications traffic** —

(A) Telecommunications traffic between a dominant certificated telecommunications utility (DCTU) and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory extended area service (EAS) areas served by the DCTU; or

(B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

(156)**Premises** — A tract of land or real estate including buildings and other appurtenances thereon.

(205)**Station** — A telephone instrument or other terminal device.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.219. Administration of Expanded Local Calling Service Requests.

- (a) **Purpose.** The purpose of this section is to describe the process used to administer requests from telephone service subscribers for two-way toll-free expanded local calling service (ELCS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter C. Only incumbent local exchange companies (ILECs) are subject to the provisions of PURA, Chapter 55, Subchapter C.
- (b) **Definitions** The following terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.
 - (1) **Expanded local calling service (ELCS)** — The meaning assigned in §26.221 of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).
 - (2) **Expanded local calling service (ELCS) fee** — The meaning assigned in §26.221 of this title.
 - (3) **Expanded local calling service (ELCS) surcharge** — The meaning assigned in §26.221 of this title.
 - (4) **Metropolitan exchange** — The meaning assigned in PURA §55.041, including Austin, Corpus Christi, Dallas/Fort Worth, Houston, San Antonio and Waco.
- (c) **ELCS requests, notice and intervention.**
 - (1) **Filing a request for ELCS.** Telephone subscribers in an exchange that has 10,000 or fewer access lines are eligible to request ELCS from the commission by filing information listed in paragraph (2) of this subsection. The request shall be assigned a project number. A presiding officer shall be assigned to the project and the request shall be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the request should be docketed. A request from telephone subscribers in an exchange that has more than 10,000 access lines shall be dismissed by the presiding officer within 20 days of the date the request is filed.
 - (2) **Contents of a request for ELCS.**
 - (A) **Filing letter.** A request for ELCS shall include a letter that designates a contact person to respond to inquiries about the request for ELCS. The name, address, and daytime telephone number of the contact person shall be identified in the letter. The letter shall be sent with all other parts of the request to the commission's Filing Clerk.
 - (B) **Community of interest statement.** If the petitioning and petitioned exchanges do not meet the geographic proximity requirement set forth in subsection (d)(3)(C) of this section, the request for ELCS shall contain a statement describing the community of interest between the petitioning and petitioned exchanges, based upon standards in subsection (d)(3)(D) of this section. The statement must describe the existence of a community of interest between the petitioning exchange and each petitioned exchange in sufficient detail to allow for verification of assertions made.
 - (C) **Statement of changed circumstances.** If subscribers in the petitioning exchange denied by ballot a petition for ELCS to any one or more of the same petitioned exchange(s) within the previous 18 months, the new request shall contain a statement explaining what circumstances have changed since the time of the prior ballot that materially affect the need for ELCS between the petitioning exchange and each petitioned exchange. A petition is denied by ballot if it fails to receive an affirmative vote of at least 70% of the voting subscribers in the petitioning exchange.
 - (D) **Petition.** A request for ELCS shall include a petition. A petition may request ELCS between a single petitioning exchange and one or more petitioned exchanges. A petition shall be signed by at least 100 subscribers or 5.0% of subscribers in the petitioning exchange, whichever is less. Each signatory shall include his or her name and telephone number on the petition. Each signature page of the petition for ELCS shall include:
 - (i) the name and telephone number of a petition coordinator, whom signatories may contact for further information about the petition;

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Subchapter J. COSTS, RATES AND TARIFFS.

§26.219(c)(2)(D) continued

- (ii) the name, area code and prefix of the exchange from which the petitioners receive telephone service (the petitioning exchange),
 - (iii) the name, area code and prefix(es) of exchange(s) to which ELCS is sought (the petitioned exchange(s));
 - (iv) a clear statement that only subscribers in the petitioning exchange may sign the petition,
 - (v) a clear statement that subscribers in the petitioning exchange will be billed a monthly ELCS fee of up to \$3 50 per residential line and \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained in one or more petitions, in addition to basic local exchange service rates;
 - (vi) a clear statement that there must be an affirmative vote of at least 70% of those subscribers responding within the petitioning exchange as to each petitioned exchange before ELCS can be implemented to that petitioned exchange, and
 - (vii) a clear statement that, in addition to ELCS fees billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to that ILEC's Texas customers to recover the costs of implementing ELCS
 - (3) **Notice to affected ILECs.** Within five working days of receipt by the Office of Regulatory Affairs of a filed request for ELCS, the Office of Regulatory Affairs shall send a copy of the request by certified mail to each ILEC serving either a petitioning or a petitioned telephone exchange.
 - (4) **Notice to affected telephone service subscribers.** An ILEC serving a petitioning exchange shall arrange for publication of notice in the petitioning exchange and shall bear the cost of notice as a regulatory case expense. This notice shall be published once, not later than 15 days before ballots are mailed in accordance with subsection (f) of this section, in each local newspaper in the petitioning exchange. The information contained in subsection (f)(2)(A)-(D) and (F) of this section shall be published. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapter C-E, Chapter 51, §51 009; and Chapter 53, Subchapters C-E Proceedings) modified to reflect the appropriate intervention deadline and shall be written in both English and Spanish. Additionally, the presiding officer shall cause notice to be published in the *Texas Register* no later than 15 days before ballots are mailed.
 - (5) **Intervention.** The intervention deadline shall be no sooner than ten days after the last date notice is published in the petitioning exchange. On or before the intervention deadline stated in the published notice, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request to intervene is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.
- (d) **Initial review of a request for ELCS.**
- (1) **Sufficiency.** The presiding officer shall, by order issued within 15 days of the filing of a request for ELCS, determine if the request is sufficient as to the requirements in subsection (c)(2) of this section. If the presiding officer finds that the request is deficient, the presiding officer shall notify the designated contact person so that the contact person may cure any such deficiencies. Deficiencies in the request for ELCS may be cured within 30 days of its initial filing. If not cured by the subsequent filing of sufficient information within that time, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part, without prejudice to the filing of another request involving the same petitioning and petitioned exchanges
 - (2) **Changed Circumstances.** The presiding officer shall, by order issued no later than 15 days after the filing of the request for ELCS, determine whether a statement of changed circumstances required by

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§26.219(d)(2) continued

subsection (c)(2)(C) of this section justifies allowing another ballot sooner than 18 months after the denial by ballot of a prior petition involving the same petitioning and petitioned exchanges. If the presiding officer finds that the statement does not justify allowing another ballot, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part

(3) Geographic proximity or community of interest.

- (A) Distance limitation ELCS is not available where the most distant central switching offices in a petitioning and petitioned exchange are more than 50 miles apart as measured by using vertical and horizontal (V&H) geographic coordinates.
- (B) Determination. The presiding officer shall, by order issued no later than 15 days after the request for ELCS is filed, determine whether the request satisfies either the geographic proximity requirement set forth in subparagraph (C) of this paragraph or the community of interest requirement set forth in subparagraph (D) of this paragraph. If the presiding officer determines that neither the geographic proximity nor the community of interest requirements are satisfied, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.
- (C) Geographic proximity The geographic proximity requirement is satisfied as to each petitioned exchange if the nearest central switching office in the petitioning exchange is located within 22 miles of the nearest central switching office in the petitioned exchange as measured using vertical and horizontal (V&H) geographic coordinates.
- (D) Community of interest A community of interest statement shall address situations where the nearest central switching offices in a petitioning and petitioned exchange are more than 22 miles apart and the most distant central offices in a petitioning and petitioned exchange are 50 or less miles apart. A community of interest between a petitioning exchange and a petitioned exchange exists, for purposes of this section, when the community of interest statement includes information demonstrating that the petitioning and petitioned exchanges have a relationship because of schools, hospitals, local governments, or business centers, or that the petitioning or petitioned exchanges have other relationships that make the unavailability of ELCS a hardship on residents of the area.

(e) Exemptions.

- (1) **ILEC requests for exemption** An ILEC serving either the petitioning or the petitioned exchange may file a request for exemption from the potential requirement to provide ELCS. Such requests must be filed no later than 20 days after the filing of the request for ELCS. The request for exemption shall be accompanied by an affidavit identifying in detail which conditions described in paragraph (2) of this subsection exist. If the petition includes more than one petitioned exchange, the request for exemption shall clearly identify which conditions apply to which exchanges. The presiding officer shall look to facts or circumstances existing on the date the ELCS request is filed in determining whether a request for exemption may be granted.
- (2) **Types of exemptions.** The following conditions shall be considered by the presiding officer in determining whether to exempt an ILEC from being required to provide ELCS:
 - (A) the ILEC serves fewer than 10,000 access lines statewide; or
 - (B) the petitioning or petitioned exchange is served by a telephone cooperative; or
 - (C) extended area service (EAS) or extended metropolitan service is currently available between the petitioning exchange and the petitioned exchange(s), or
 - (D) the petitioning or petitioned exchange is a metropolitan exchange as defined in subsection (b) of this section; or
 - (E) it is technologically or geographically infeasible to provide ELCS to the area; or,
 - (F) the request for ELCS proposes to split a petitioning or petitioned exchange.

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§26.219(e) continued

- (3) **Determination.** If one or more of the conditions described in paragraph (2)(A)-(D) or (2)(F) of this subsection exist, the presiding officer shall, within 40 days after the filing of the request for ELCS, dismiss the request in whole, if appropriate, or in relevant part. If the ILEC requests an exemption based on paragraph (2)(E) of this subsection, the presiding officer shall, by order issued no later than 40 days after the filing of the request for ELCS, determine whether the ILEC's affidavit sufficiently demonstrates that technology is not available in the marketplace to make ELCS feasible. If the exemption request is granted, the presiding officer shall dismiss the request for ELCS in whole, if appropriate, or in relevant part.
- (f) **Balloting.** If all applicable requirements contained in subsections (c) and (d) of this section are met and no exemption requests are outstanding, the presiding officer shall issue an order directing the ILEC serving the petitioning exchange to begin balloting subscribers in that exchange, and the presiding officer shall notify the designated contact person for the petitioning exchange that balloting will take place.
- (1) **Cost of balloting.** The cost of preparing and distributing ballots shall be borne by the ILEC serving the petitioning exchange as a regulatory case expense.
- (2) **Ballot format.** No later than 30 days after the presiding officer's order directing the ILEC serving the petitioning exchange to begin balloting, that ILEC shall distribute a ballot, written in English and Spanish, to each subscriber in the petitioning exchange. The ballot shall require a separate vote from each subscriber for each petitioned exchange. The ballot must be in a standard form approved by the Office of Regulatory Affairs and each ballot shall include:
- (A) a statement explaining ELCS;
- (B) a statement that subscribers in the petitioning exchange have petitioned to expand the toll-free local calling area into the named exchange(s);
- (C) a description of the proposed ELCS area, including the name, area code and prefix of the petitioning exchange and each petitioned exchange for which toll-free local calling is sought;
- (D) a statement that if at least 70% of those subscribers responding vote "yes" as to any petitioned exchange.
- (i) subscribers in the petitioning exchange will be billed, in addition to the company's local exchange service rates, a monthly ELCS fee of up to \$3.50 per residential line and up to \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained as the result of one or more petitions; and
- (ii) in addition to the ELCS fee billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to all of the ILEC's Texas subscribers to recover the costs of implementing ELCS; and
- (iii) the amount of the monthly ELCS fee and ELCS surcharge will depend on the revenue lost and costs incurred by the company providing the service;
- (E) unambiguous instructions for voting, including the following statement in large print: "It is important that you return this ballot. If you are in favor of obtaining Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'YES' next to that exchange. If you do not want Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'NO' next to that exchange";
- (F) a statement that a petitioned exchange will be included in the expanded toll-free local calling area only if at least 70% of the petitioning subscribers responding vote affirmatively for ELCS to that exchange;
- (G) the date by which the returned ballot must be postmarked, which shall be 15 days from the date the ballot is mailed to the customer;
- (H) the address to which the ballot should be returned upon completion of voting, identifying the commission as the recipient of returned ballots; and

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§26.219(f)(2) continued

- (I) a unique identification number assigned by the ILEC serving the petitioning exchange to each subscriber in that exchange.
- (3) **Master list of subscribers.** No later than 35 days after the presiding officer's order to the ILEC serving the petitioning exchange to begin balloting, that ILEC shall submit to the Office of Regulatory Affairs a master list of all subscribers within the petitioning exchange in an electronic spreadsheet format prescribed by the Office of Regulatory Affairs. The ILEC shall classify the master list as confidential, and the list shall be treated as such under the provisions of the Government Code, Title 5, Chapter 552. The master list shall be arranged sequentially by billing number and shall include for each subscriber in the petitioning exchange:
 - (A) the billing name,
 - (B) the billing number,
 - (C) the service address;
 - (D) the mailing address;
 - (E) the class of service; and
 - (F) the unique identification number assigned to the subscriber by the ILEC.
- (4) **Response to balloting** The Office of Regulatory Affairs shall, no later than 15 days after the date stated on the ballot for return of the ballot, notify the presiding officer, the contact person, and affected ILEC(s) of the results of the ballot by filing a ballot report. The ballot report shall specify the results of the ballot for each petitioned exchange.
 - (A) **Affirmative vote**
 - (i) If at least 70% of petitioning subscribers responding vote affirmatively as to any petitioned exchange, the ILEC serving the petitioning exchange shall file with the commission, within 30 days after the filing of the Office of Regulatory Affairs' ballot report, an application to establish ELCS fees pursuant to PURA §55.048(b). The ILEC's application shall include the ILEC's proposed implementation schedule and proposed schedule of fees as well as other information described in §26.221(e)(1)-(9) of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).
 - (ii) The implementation of ELCS shall be scheduled for completion within five months after an order is issued by the presiding officer acknowledging the ballot results. The ILEC shall explain and justify the reasons for any implementation delay beyond five months.
 - (iii) No later than 15 days after the ILEC's filing of its application to establish ELCS fees, the presiding officer shall issue an order granting interim approval of the ILEC's proposed fees, which may be billed as of the first billing cycle following implementation of ELCS from the petitioning exchange. All fees given interim approval are subject to refund.
 - (iv) No later than 30 days after the ILEC's filing of its implementation schedule, the presiding officer shall issue an order approving, modifying, or denying the schedule.
 - (B) **Negative vote.** If less than 70% of those responding vote in favor of ELCS to a petitioned exchange, the presiding officer shall, within 10 days after the filing of the Office of Regulatory Affairs' ballot report, deny the request for ELCS to that specific petitioned exchange.
- (g) **Calculation of ELCS Fees.** ELCS fees shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula. Key formula terms are defined in §26.221(b) of this title.
 - (1) **Regulatory case expenses.** In accordance with PURA §55.048(d), an ILEC may not recover regulatory case expenses under this subsection by surcharging petitioning subscribers.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.219(g) continued

- (2) **ELCS fee formula.** First, sum lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Divide the annual ELCS requirement by 12 to obtain the monthly requirement, which is the numerator. Second, obtain the most current count of access lines in the petitioning exchange. Multiply the number of business lines by two. Add the doubled business lines to the number of residential lines. This total is the denominator. Third, divide the numerator by the denominator to obtain the monthly ELCS fee per residential line. Multiply the monthly ELCS fee per residential line by two to obtain the monthly ELCS fee per business line. Round ELCS fees up or down to the nearest penny.
 - (3) **ELCS fee maximums.** The monthly ELCS fee per residential line shall not exceed \$3.50 for up to five petitioned exchanges. The monthly ELCS fee per business line shall equal twice the monthly ELCS fee per residential line; however, the monthly ELCS fee per business line shall not exceed \$7.00 for up to five petitioned exchanges. For each additional petitioned exchange beyond five, the monthly ELCS fee shall not exceed an additional \$1.50 per residential or business line.
 - (4) **ELCS surcharge.** If ELCS fees do not recover the annual ELCS requirement, an ILEC may request establishment of an ELCS surcharge under §26.221 of this title.
- (h) **Docketing.** Within 30 days of the issuance of an order under subsection (f)(4)(A)(iii) of this section granting interim approval of fees to be billed by the ILEC serving the petitioning exchange, any intervenor or the Office of Regulatory Affairs may request that the presiding officer docket the project. Docketing may be requested in order to allow further investigation of the ILEC's application or, for good cause shown, any other reason. Upon receipt of a request for docketing, the presiding officer shall docket the project and shall establish a procedural schedule. Upon docketing, discovery may commence in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).
- (i) **Final approval.** If no request for docketing is timely filed under subsection (h) of this section, the presiding officer shall, within 60 days after the order granting interim approval of fees, issue an order granting final approval to or modification of the ELCS fees to be billed by the ILEC serving the petitioning exchange. Upon final approval by the presiding officer of either the proposed or modified tariff sheets, the fees shall be considered permanent unless modified in the future, for good cause, by the commission.

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§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.

- (a) **Purpose** The purpose of this section is to provide the standard for review of an incumbent local exchange company (ILEC) application, filed pursuant to the Public Utility Regulatory Act (PURA) §55.048(c), to recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.
 - (1) **Avoided costs** — ILEC costs that are reduced or eliminated due to implementation of ELCS.
 - (2) **Costs incurred** — The amount of recurring and non-recurring costs incurred by an ILEC to implement ELCS, minus avoided costs
 - (3) **Expanded local calling service (ELCS)** — A two-way toll-free local calling service provided by an ILEC to telephone service subscribers pursuant to §26.219 of this title (relating to Administration of Expanded Local Calling Service Requests).
 - (4) **Expanded local calling service (ELCS) fee** — A fee billed by an ILEC, pursuant to PURA §55.048(b), to subscribers in a petitioning telephone exchange.
 - (5) **Expanded local calling service (ELCS) requirement** — The sum of lost revenue and costs incurred due to implementation of ELCS.
 - (6) **Expanded local calling service (ELCS) surcharge** — A fee billed by an ILEC, pursuant to PURA §55.048(c), to all of its Texas subscribers, unless an exception is granted by the commission. ELCS surcharges are designed to recover the residual in paragraph (8) of this subsection.
 - (7) **Lost revenue** — The loss of revenue an ILEC realizes due to implementation of ELCS.
 - (8) **Residual** — The sum of lost revenue and costs incurred, minus revenue collected from ELCS fees.
- (c) **General Principles.** The commission shall consider these general principles when establishing or increasing ELCS surcharges.
 - (1) The commission may, at any time, initiate a show cause investigation or a compliance investigation of ELCS surcharges pursuant to Procedural Rule §22.241 of this title (relating to Investigations) to determine whether ELCS surcharges comply with the requirements in PURA §55.048.
 - (2) An ILEC bears the burden of demonstrating that a proposed ELCS surcharge:
 - (A) recovers lost revenue and costs incurred,
 - (B) recovers costs necessary only for implementation of ELCS and
 - (C) is just and reasonable.
 - (3) If an ILEC departs from the requirements in subsection (e)(1)-(6) of this section, and proposes instead to use statistical sampling or another method of calculating ELCS surcharges, the ILEC bears the burden of demonstrating the reasonableness of the alternative method as it relates to the surcharge at issue.
 - (4) An application to establish an ELCS surcharge shall contain information that enables the Office of Regulatory Affairs to validate and replicate the method used by the ILEC to develop a proposed ELCS surcharge.
 - (5) When established, ELCS surcharges shall be based upon the most current count of local exchange access lines billed by an ILEC.
 - (6) The commission shall pursue the goal of revenue neutrality in designing ELCS surcharges.
 - (7) Except as provided under subsection (i)(1) of this section, an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period
 - (8) ELCS surcharges shall be designed so that business subscribers are billed twice the monthly per line charge billed to residential subscribers.

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- (d) **Confidentiality.** Before filing an application regarding an ELCS surcharge, an ILEC shall obtain agreement from the Office of Regulatory Affairs on a method for securing the confidentiality of information the ILEC deems confidential. An application filed pursuant to subsection (e) of this section shall not exclude information deemed confidential by the ILEC.
- (e) **Filing an application.** An application to establish or increase an ELCS surcharge shall be assigned a project number and a presiding officer shall be assigned to the project. An ILEC's application shall be reviewed administratively unless the presiding officer docket the project. An application shall, at a minimum, include
 - (1) twelve consecutive months of actual toll revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show actual toll revenue billed by the ILEC for each direction of each pre-ELCS toll route for each of the 12 consecutive months collected;
 - (2) twelve consecutive months of actual access revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show access revenue billed by the ILEC for each direction of each pre-ELCS access route for each of the 12 consecutive months collected;
 - (3) a calculation of the effect of any mechanism for pooling or settling revenue collected from and disbursed to telecommunications providers;
 - (4) copies of documents, such as invoices, work orders, receipts and lease agreements, that demonstrate the costs incurred by an ILEC to implement ELCS, with recurring costs and non-recurring costs separately identified for each pre-ELCS toll route;
 - (5) workpapers supporting all documents contained in the application, including but not limited to, the ILEC's development of factors, ratios, allocations, estimates, projections, averages and labor rates;
 - (6) a calculation of avoided costs;
 - (7) one or more tariff sheets reflecting the proposed rates;
 - (8) a request for exemption, if any, from one or more requirements in this subsection;
 - (9) a copy of the confidentiality agreement, if such an agreement is necessary, signed by a representative of the Office of Regulatory Affairs;
 - (10) the text of the proposed notice of an application to establish or increase ELCS surcharges; and
 - (11) the ILEC's preferred duration of applicability of the proposed ELCS surcharges among alternatives listed in subsection (i) of this section.
- (f) **Administrative response to an application.**
 - (1) **Notice.** The presiding officer shall approve or modify the notice proposed under subsection (e)(10) of this section within 20 days after the filing of an application to establish or increase ELCS surcharges. The ILEC shall arrange for publication of notice at least once each week for four consecutive weeks, in newspapers having general circulation in each of the ILEC's affected telephone exchanges. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings) modified to reflect the appropriate intervention deadline, shall describe the application and shall be written in both English and Spanish. Notice shall be published within 40 days of the date the presiding officer files an order approving the notice format. The ILEC shall file an affidavit of completion of published notice within ten days following such completion. The presiding officer shall cause notice to be published in the *Texas Register* within 30 days of the date an order of approval of the notice format is filed. Additionally, the ILEC shall provide a copy of its application to the Office of Public Utility Counsel on the same day the application is filed with the commission's Filing Clerk

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Subchapter J. COSTS, RATES AND TARIFFS.

§26.221(f) continued

- (2) **Intervention.** The intervention deadline shall be no sooner than ten days after the last date notice is published. On or before the intervention deadline, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene, in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request for intervention is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.
- (3) **Discovery.** Discovery may commence on the date the application is filed in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures)
- (4) **Interim surcharges.** Not more than 30 days after the intervention deadline, the presiding officer shall grant or deny, in whole or in part, a request for interim relief and may approve or modify a proposed interim ELC surcharge in accordance with Procedural Rule §22.125 of this title (relating to Interim Relief).
- (5) **Sufficiency review and requests for exemption.** Within 30 days after the filing of an ILEC application, the Office of Regulatory Affairs shall file comments on the sufficiency of the application and on any request for exemption filed by the ILEC under subsection (e)(8) of this section. Not more than 30 days after the Office of Regulatory Affairs' comments are filed, the ILEC shall file a response and may amend or supplement its application. Not more than ten days after the ILEC's response is filed, the Office of Regulatory Affairs shall file a recommendation to the presiding officer addressing whether the application is sufficient and whether any requests for exemption should be granted.
- (6) **Docketing.** If the Office of Regulatory Affairs or any intervenor files, within 30 days after the intervention deadline, a request to docket the project, the presiding officer shall docket the project. Upon docketing, the presiding officer shall ascertain whether the parties prefer to pursue settlement negotiations or alternative dispute resolution. If so, the presiding officer shall abate the docket for a reasonable period. If the parties prefer to establish a procedural schedule, the presiding officer may refer the docket to the State Office of Administrative Hearings or may take other appropriate action. If neither the Office of Regulatory Affairs nor an intervenor requests docketing, the presiding officer shall administratively approve or modify the application within 40 days after the intervention deadline.
- (g) **Calculation of initial ELCS surcharges.** An initial ELCS surcharge shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

 - (1) **Numerator.** First, sum the lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Second, use the most current count of access lines to calculate the amount of ELCS fee revenue received annually by the ILEC. Subtract the annual ELCS fee revenue from the annual ELCS requirement. The result is the annual residual. Third, divide the annual residual by 12 to obtain the monthly residual, the numerator.
 - (2) **Denominator.** First, obtain the most current count of residential and business lines served by the ILEC in Texas. Second, multiply the number of business lines by two. Third, add the doubled business lines to the number of residential lines. This total is the denominator.
 - (3) **ELCS surcharge formula.** Divide the numerator in paragraph (1) of this subsection by the denominator in paragraph (2) of this subsection to obtain the monthly ELCS surcharge per residential line. Multiply the monthly ELCS surcharge per residential line by two to obtain the monthly ELCS surcharge per business line. Round ELCS surcharges up or down to the nearest penny

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

- (h) **Adjustments to ELCS surcharges.** ELCS surcharges shall be adjusted using the formula described in subsection (g) of this section, except that:
- (1) the numerator established in a previous application may be modified to consider new information relevant to development of the residual:
 - (A) for any ELCS surcharge approved before February 1, 2000, if the commission reserved the right to subsequently review the costs incurred and lost revenues associated with the ELCS surcharge; or
 - (B) for any ELCS surcharge approved after February 1, 2000; and
 - (2) the denominator shall be modified to reflect the most current count of local exchange access lines at the time of the adjustment. For ELCS surcharges approved before February 1, 2000, if the number of access lines in the denominator initially included only non-petitioning exchanges, an adjustment in the number of access lines shall include only non-petitioning exchanges.
- (i) **Duration.** An ILEC shall select a preferred duration of applicability of its proposed ELCS surcharges from alternatives listed in this subsection. The commission may establish ELCS surcharges for any duration.
- (1) **Permanent.** An ILEC may initiate a review of all of its rates and charges by filing a rate filing package. Following a review of the ILEC's cost of service pursuant to Substantive Rule §26.201 of this title (relating to Cost of Service), any resulting ELCS surcharge shall be considered permanent unless modified, for good cause, by the commission
 - (2) **Phase-down.** If an ILEC's application to establish or increase an ELCS surcharge contains all information required in subsection (e)(1)-(6) of this section, the ILEC may propose a phase-down of its ELCS surcharge for a duration of five years. The phase-down shall be implemented by reducing each ELCS surcharge by 20% at the end of each year of the phase-down period. At the end of the five-year phase-down period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for each of the five years of the phase-down period.
 - (3) **Phase-out.** An ILEC that files an application to establish or increase an ELCS surcharge may propose a phase-out of its ELCS surcharge. A proposed phase-out shall be for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for the two-year period and shall state the two-year duration of applicability of the ELCS surcharges

ASAP Paging, Inc. Petition for Preemption of TPUC

Exhibit 4: Order Granting Interim Relief



Control Number: 25673



Item Number: 18

Addendum StartPage: 0

SOAH DOCKET NO. 473-02-2503
PUC DOCKET NO. 25673

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COMPLAINT OF ASAP PAGING, INC., § BEFORE THE STATE OF TEXAS
REQUEST FOR INTERIM RULING, §
AND REQUEST FOR EMERGENCY § OF
ACTION AGAINST CENTURYTEL OF §
SAN MARCOS, INC. § ADMINISTRATIVE HEARINGS

ORDER NO. 3
GRANTING ASAP PAGING, INC.'S REQUEST FOR EMERGENCY ACTION

I. ORDER

On April 15, 2002, a hearing was held on ASAP Paging, Inc.'s (ASAP) request for emergency action. Based on the evidence presented and counsels' arguments and briefing, the Administrative Law Judge (ALJ) GRANTS ASAP's request for emergency action. Therefore, pending a final decision in this case, the ALJ ORDERS that Respondent CenturyTel of Austin, Inc. (CenturyTel) shall take the necessary actions to cease requiring its San Marcos exchange users to dial 1+ in order to call ASAP's Lockhart, Texas, NXX, and CenturyTel shall not charge its customers a long-distance toll for calling ASAP's Lockhart, Texas, NXX. Based on the evidence presented at this hearing, the ALJ finds that such calls should be toll free because CenturyTel's San Marcos exchange and SWBT's Lockhart exchange (to which ASAP's NXX is assigned) are part of the same toll-free Extended Local Calling Service (ELCS) area. Requiring callers from the CenturyTel's San Marcos exchange to pay a toll to call ASAP's Lockhart NXX improperly charges a toll for ELCS service, and it will damage ASAP's ability to compete for paging service customers in the San Marcos area.

II. DISCUSSION

A. Background

ASAP is licensed by the Federal Communications Commission (FCC) to conduct Commercial Mobile Radio Service (CMRS) operations in central Texas. ASAP operates a switch

in Austin to support these services. This Austin switch primarily supports ASAP's central Texas paging services, but it also provides service to Information Service Providers (ISPs).

ASAP has obtained several central office codes (NXXs) from the North American Numbering Plan Administrator (NANPA). One of ASAP's codes [512-384] is designated as a prefix for the Lockhart exchange. When a paging call to ASAP's Lockhart 512-384 NXX is received by ASAP's Austin switch, its equipment transmits a signal simultaneously to a transmitter located in Lockhart and to a transmitter located in San Marcos. The signal is then re-transmitted and received by the pager, wherever it might be located within the range of these transmitters.¹ ASAP suggests that most paging calls to its 512-384 NXX originate in the CenturyTel San Marcos exchange and also terminate at a pager located in San Marcos.

CenturyTel is the Incumbent Local Exchange Carrier (ILEC) for the San Marcos exchange while Southwestern Bell Telephone (SWBT) is the ILEC for the Lockhart exchange. But CenturyTel's San Marcos exchange and SWBT's Lockhart exchange have been combined into an Extended Local Calling Service (ELCS) area at all times relevant to this proceeding. ELCS is a two-way toll-free calling service that causes calls between two points that would otherwise incur toll to be treated as "local calls" without a toll. Thus, with ELCS, telephone calls between San Marcos and Lockhart do not incur a long-distance toll as they normally would without ELCS. To compensate ILECs for expenses and lost revenue incurred as a result of ELCS, telephone customers in the ELCS area pay a monthly ELCS fee to the ILECs.²

The CenturyTel San Marcos exchange and the SWBT Lockhart exchange are located adjacent to each other, but ELCS calls between the two exchanges do not travel directly between the two exchanges. Instead, these calls are routed through SWBT's Greenwood access tandem located in Austin and then forwarded to either San Marcos or Lockhart. Calls from San Marcos to ASAP's

¹ It was not clear from the record whether calls to the 512-384 prefix are also sent to other transmitters.

² See generally, TEX. UTIL. CODE §§ 55.021-55.048, PUC SUBST. R. §§ 26.219-26.221.